

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0472
Indiana Gross Retail Tax
For 2001

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ISSUE

I. Contract for the Purchase and Installation of HVAC Equipment – Gross Retail Tax.

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2(a); 45 IAC 2.2-4-22(e); 45 IAC 2.2-4-25(a); 45 IAC 2.2-4-26(a); Sales Tax Information Bulletin 60 (Dec. 2002).

Taxpayer argues that that it is not required to pay use tax on the cost of purchasing and installing air conditioning and heating equipment at taxpayer's business location.

STATEMENT OF FACTS

Taxpayer operates an Indiana service business. During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and concluded that taxpayer had failed to pay sales tax on a contract for the purchase and installation of heating and air conditioning equipment. The Department concluded that the sales tax should have been collected by the contractor at the time taxpayer paid for the equipment and installation. Accordingly, the Department assessed use tax and sent a notice of proposed assessment dated November 2003.

Taxpayer challenged the assessment and sent a protest to that effect during November 2003. Taxpayer declined the opportunity take part in an administrative hearing on the challenged assessment. Instead, taxpayer instructed the Department to prepare a Letter of Findings based upon the contents of taxpayer's initial protest letter, the information contained within the Department's audit report, and on other correspondence sent by the taxpayer. This Letter of Findings results.

DISCUSSION

I. Contract for the Purchase and Installation of HVAC Equipment – Gross Retail Tax.

In 2001, taxpayer hired a contractor to install new air conditioning and heating equipment. After the equipment was installed, the contractor submitted a bill for \$5,060. The bill stated charges of \$3,100 for a “new 90% gas furnace” and \$1,960 for a “5 ton condensing unit.” The bill was apparently for both labor and materials although the bill did not differentiate between those costs. The bill had a space listed for “tax,” but there was nothing written in that space.

The audit found that, “The taxpayer entered into a time and material contract for building improvements, i.e. furnace and air conditioning system.” The audit stated that the contractor was acting as a retail merchant with respect to the materials furnished and should have collected sales tax with respect to those materials. Because the contractor failed to do so, the audit concluded that taxpayer was required to pay the corresponding use tax.

Taxpayer protested this decision and sent the Department a letter from the contractor in which the contractor stated that “sales tax was included in our quote . . . for the [] HVAC work that was completed in November of 2001 in the amount of \$5,060.” The contractor’s letter also stated that, “The exact amount of sales tax paid was \$108.34 on the materials involved in this job.”

The Department requested that taxpayer provide a copy of the contractor’s original quote which purportedly included the sales tax charge. Taxpayer did so but the contractor’s original quote did not state that sales tax would be charged. Instead the quote provided that the contractor would “supply all labor, equipment, and supplies necessary to replace the existing furnace” The quote stated that it would charge \$3,100 for the new furnace and \$1,960 for the new air conditioner.

It is taxpayer’s contention that “sales tax was paid on the materials” Taxpayer stated that the furnace and air conditioning equipment were “a permanent attachment to real estate and . . . are not subject to sales tax.” Taxpayer concludes that it is not its responsibility to “determine how [contractor] computes and pays sales tax to the state of Indiana.”

Indiana imposes a sales tax on retail sales of tangible personal property. IC 6-2.5-2-1. Indiana also imposes a complementary use tax on tangible personal property stored used, or consumed in Indiana when the sales tax was not paid at the time of the purchase. IC 6-2.5-3-2(a). The audit found that because the contractor’s bill did not include a listing for sales tax, taxpayer should have paid use tax when it bought the air conditioning and heating units.

From the information provided by taxpayer and the contractor, it becomes apparent that the parties entered into a lump sum contract for improvements to taxpayer’s business location. Sales Tax Information Bulletin 60 (Dec. 2002) states that, “‘Lump sum contract’ means a contract to incorporate construction materials into real estate with the charge for labor and materials being quoted as one price.” *See also* Sales Tax Information Bulletin 60 (Nov. 2000). The fact that the parties entered into a lump sum contract is

significant because taxpayer is not subject to use tax liability for those transactions – entered into for the purpose of improving the taxpayer’s realty – in which the agreement is couched in terms of a lump sum contract. Under 45 IAC 2.2-4-22(e), “With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner . . . He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.” Accordingly, the contractor will either pay the gross retail tax “up-front” when he initially purchases the construction materials or at the point where the materials are incorporated into the taxpayer’s realty. Either “up-front” or at the point where the materials are incorporated into the taxpayer’s realty, in lump sum contracts between the taxpayer and its contractors, it is the contractors which are ultimately responsible for paying the gross retail tax on the construction materials. 45 IAC 2.2-4-26(a) provides that “[a] person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used.” 45 IAC 2.2-4-25(a) states that, “For purposes of [45 IAC 2.2], ‘contractor’ means any person engaged in converting construction material into realty.” The regulation defines the term “contractor” to include “persons engaged in building, cement work, carpentry, plumbing, *heating*, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.” *Id.* (*Emphasis added*).

Taxpayer entered into an agreement with its contractor for the purchase and installation of new heating and air conditioning equipment. The agreement was framed in terms of a lump sum contract. The contractor was responsible for paying sales tax when it initially purchased the equipment or use tax when it installed the equipment at taxpayer’s business location. The contractor’s responsibility for doing so is not the taxpayer’s concern.

FINDING

Taxpayer’s protest is sustained.